



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### NORTHERN REGIONAL OFFICE

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Douglas W. Domenech  
Secretary of Natural Resources

David K. Paylor  
Director

Thomas A. Faha  
Regional Director

**STATE AIR POLLUTION CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
BP NEW DOMINION TECHNOLOGY PARK II, LLC  
FOR  
BP NEW DOMINION TECHNOLOGY PARK II  
Registration No. 73369**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and BP New Dominion Technology Park II, LLC regarding BP New Dominion Technology Park II, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Facility" means the New Dominion Technology Park II, LLC facility, located at 499 Grove Street in Herndon, Virginia which is located in Fairfax County, Virginia.
5. "FCE" means a full compliance evaluation by DEQ staff.
6. "New Dominion" means BP New Dominion Technology Park II, LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. New Dominion is a "person" within the meaning of Va. Code § 10.1-1300.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. "NOx" means oxides of nitrogen.
9. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
11. "Permit" means a Minor New Source Review permit to construct and operate two diesel engine-generator sets, which was issued under the Virginia Air Pollution Control Law and the Regulations to BP New Dominion Technology Park II, LLC on September 26, 2007.
12. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
13. "Va. Code" means the Code of Virginia (1950), as amended.
14. "VAC" means the Virginia Administrative Code.
15. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
16. "VEE" means a Visible Emissions Evaluation, as determined by EPA Method 9 (*see* 40 CFR 60, Appendix A).

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. New Dominion owns and operates the Facility in Herndon, Virginia. The Facility is an office building. The Facility is the subject of the Permit which allows New Dominion to construct and operate two diesel engine-generator sets: NDIIG1 and NDIIG2.

2. On January 28, 2011, Department staff conducted a FCE of the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:
  - a. New Dominion could not provide 12-month rolling totals of hours of operation for NDIIG1 and NDIIG2.
  - b. The fuel certification for the last delivery of No. 2 diesel fuel at the Facility did not indicate the sulfur content of the delivery.
  - c. New Dominion could not provide 12-month rolling facility wide NOx emissions.
  - d. Based on a review of Facility files, DEQ has no documentation to indicate that a stack testing verification meeting had taken place.
  - e. Based on a review of Facility files, DEQ has no documentation to indicate that initial NOx stack testing of NDIIG1 or NDIIG2 has occurred.
  - f. Based on a review of Facility files, DEQ has no documentation to indicate that a VEE of NDIIG1 or NDIIG2 has occurred.
  - g. New Dominion could not provide documentation to show that it was calculating 12-month rolling totals of hours of operation for NDIIG1 and NDIIG2 and maintaining fuel certifications for fuel deliveries that contain sulfur content information.
  - h. Based on a review of DEQ files, DEQ has no documentation to indicate that New Dominion submitted construction commencement and actual start-up date notifications for NDIIG1 and NDIIG2.
3. Permit Condition 3 states that the diesel engine-generator sets (NDIIG1 and NDIIG2) shall not operate more than 500 hours per year each. The operating hours shall be calculated monthly as the sum of each consecutive twelve-month period. Compliance for the consecutive twelve-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding eleven months.
4. Permit Condition 7 requires in relevant part that the permittee obtain a certification from the fuel supplier with each shipment of diesel fuel oil. Each fuel supplier certification shall include the following: a) The name of the fuel supplier; b) The date on which the diesel fuel oil was received; c) The quantity of diesel fuel oil delivered in the shipment; d) A statement that the diesel fuel oil conforms to the American Society for Testing and Materials (ASTM) specification D975; and e) The sulfur content of the diesel fuel oil.

5. Permit Condition 8 states in relevant part that the total emissions of NO<sub>x</sub> from the operation of the facility shall not exceed 18.1 tons per year. The NO<sub>x</sub> emissions shall be calculated monthly as the sum of each consecutive twelve-month period. Compliance for the consecutive twelve-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding eleven months.
6. Permit Condition 11 requires that the permittee must arrange a meeting with the Regional Air Compliance Manager of the DEQ's Northern Regional Office (NRO) to discuss the stack testing associated with the Facility. This meeting is required to take place prior to the submittal of the final stack test protocol and is required in order for the protocol to be accepted.
7. Permit Condition 12 requires that an initial performance test be conducted on one of the diesel engine generator sets (NDIIG1 or NDIIG2) for NO<sub>x</sub> using EPA Reference Method 7 or 7E to determine compliance with the emission limits contained in Conditions 8 and 9. Permit Condition 12b states that the initial performance test be performed, reported, and demonstrate compliance within ninety days after the effective date of the Permit.
8. Permit Condition 13 requires that a VEE be conducted in accordance with EPA Method 9 on the remaining diesel engine-generator set not selected for initial stack testing. Permit Condition 13e states that the VEE shall be performed within ninety days after the effective date of the Permit.
9. Permit Condition 18 requires that the permittee maintain records of emission data and operating parameters as necessary to demonstrate compliance with the Permit.
10. Permit Condition 19 requires that within thirty days of the issuance of the Permit, the permittee furnish written notification to the Regional Air Compliance Manager of the DEQ NRO of a) the date on which construction of the diesel engine-generator sets commenced and b) the actual start-up date of the diesel engine-generator sets.
11. On March 10, 2011, based on the FCE and review of Facility files, the Department issued a Notice of Violation to New Dominion for the violations described in paragraphs C(2) through C(10), above.
12. On April 14, 2011, New Dominion submitted a written response to the NOV and copies of the fuel certification for the last shipment of fuel.
13. On April 19, 2011, Department staff met with representatives of New Dominion to discuss the violations, and stack test and VEE protocol.

14. On May 3, 2011, New Dominion submitted a final test protocol, a spreadsheet providing 12-month rolling hours of operation and facility wide NOx emissions, and a construction and start-up notification letter.
15. On June 7, 2011 New Dominion conducted the stack test and VEE.
16. Based on the results of the January 28, 2011, evaluation, the April 19, 2011 meeting, and the documentation submitted on April 14, 2011 and April 19, 2011, the Board concludes that New Dominion has violated Permit Conditions 3, 7, 8, 11, 12, 13, 18, and 19 as described in paragraphs C(3) through C(10) above.
17. The stack test and VEE reports were submitted to DEQ on July 25, 2011. The results were reviewed by DEQ and DEQ determined that the units tested on June 7, 2011, appeared to be within permitted limits.
18. New Dominion's submission of the fuel certification on April 14, 2011, stack test and VEE protocol, 12-month rolling hours of operation, facility wide NOx emissions, and a construction and start-up notification letter on May 3, 2011, and the submission of the stack test and VEE results on July 24, 2011, resolve the aforementioned violations.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders New Dominion, and New Dominion agrees to pay a civil charge of \$13,830.50 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

New Dominion shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of New Dominion for good cause shown by New Dominion, or on its own motion pursuant to the

Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, New Dominion admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. New Dominion consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order
5. New Dominion declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by New Dominion to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. New Dominion shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. New Dominion shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. New Dominion shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and New Dominion. Nevertheless, New Dominion agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after New Dominion has completed all of the requirements of the Order;
  - b. New Dominion petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to New Dominion.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve New Dominion from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by New Dominion and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.


Consent Order

BP New Dominion Technology Park II, LLC; Registration No. 73369

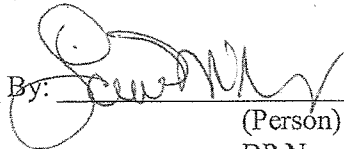
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13. The undersigned representative of New Dominion certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind New Dominion to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of New Dominion.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, New Dominion voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 8<sup>th</sup> day of September, 2011.

  
Thomas A. Faha, NRO Regional Director  
Department of Environmental Quality

New Dominion Technology Park II, LLC voluntarily agrees to the issuance of this Order.

Date: 9/6/11 By:  (Person) LAURA D. MCNULTY (Title)  
SENIOR VICE PRESIDENT  
BP New Dominion Technology Park, LLC

Commonwealth of Virginia

City/County of Herndon/Fairfax

The foregoing document was signed and acknowledged before me this 6<sup>th</sup> day of September, 2011, by Laura D. McNulty who is Senior Vice President of BP New Dominion Technology Park II, LLC, on behalf of the company.

  
Notary Public

Registration No.

My commission expires: 10/14/11  
Notary seal: